

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEW MEXICO CATTLE GROWERS'
ASSOCIATION,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; ANDREW
WHEELER, in his official capacity as
Administrator of the Environmental
Protection Agency; UNITED STATES
ARMY CORPS OF ENGINEERS; and R.D.
JAMES, in his official capacity as Assistant
Secretary for Civil Works, Department of the
Army,

Defendants.

Case No. 1:19-cv-988-JHR-SCY

CONSENT MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT

Defendants the United States Environmental Protection Agency (“EPA”), Andrew Wheeler, in his official capacity as Administrator of EPA, the United States Army Corps of Engineers, and Ricky James, in his official capacity as Assistant Secretary of the Army for Civil Works (collectively the “Agencies”) request an extension of 30 days to respond to Plaintiff’s complaint. Plaintiff consents to the Agencies’ requested extension. The grounds for this motion are as follows:

1. In its Complaint, Plaintiff challenges a 2019 rule defining “waters of the United States” under the Clean Water Act, 84 Fed. Reg. 56,626 (Oct. 22, 2019). *See* Compl. ¶¶ 1-2.

On January 23, 2020, the Administrator of EPA and the Assistant Secretary of the Army for Civil Works signed a final rule entitled “Navigable Waters Protection Rule: Definition of ‘Waters of the United States.’”¹ The Navigable Waters Protection Rule provides a new definition of “waters of the United States” and will replace the existing definition. The rule will be published in the Federal Register and will be effective 60 days thereafter.

2. The Agencies’ deadline to answer or otherwise respond to the Complaint is currently March 31, 2020. *See* Order, ECF No. 15. The Agencies previously sought and received a two-week and 60-day extension of this deadline. *See* ECF Nos. 12-15. The Agencies request that their deadline to respond to the Complaint be extended by an additional 30 days, or until April 30, 2020.

3. There is good cause to grant this motion. *See* Fed. R. Civ. P. 6(b)(1). Plaintiff is considering filing a supplemental complaint to include a challenge to the new rule. Efficiency and judicial economy weigh in favor of having Defendants file a responsive pleading only after Plaintiff and this Court decide whether a supplemental complaint is appropriate in this matter.

4. The additional time will also permit the Agencies to continue analyzing how the January 23, 2020 Navigable Waters Protection Rule may affect the issues and arguments at play in this litigation and other related legal challenges regarding the regulatory definition of “waters of the United States” under the Clean Water Act.

5. Counsel for the Agencies have conferred with counsel for Plaintiff. Plaintiff consents to the requested extension.

¹ The pre-publication version is available on EPA’s website, <https://www.epa.gov/nwpr/final-rule-navigable-waters-protection-rule> (last visited March 18, 2020).

6. No party will be prejudiced by the requested extension.

For the foregoing reasons, the Agencies request that the Court grant this motion and enter an order extending the Agencies' deadline to respond to the Complaint to April 30, 2020.

Dated: March 19, 2020

Respectfully submitted,

/s/ Erica Zilioli

ERICA ZILIOLI

United States Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

P.O. Box 7611

Washington, DC 20044

T: (202) 514-6390

F: (202) 514-8865

Erica.Zilioli@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that, on March 19, 2020, I electronically transmitted the foregoing to the Clerk of Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to registered counsel for all parties.

/s/ Erica Zilioli